IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 5389 of 2007(N)

CMA.255/2003 of DISTRICT COURT, THODUPUZHA
OS.40/2002 of SUB COURT,KATTAPPANA
(IA.1315/2002)

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PETITIONER: APPELLANT/3RD DEFENDANT

MOHANAN, S/O.GOPALAN,
KADAVAMKAL HOUSE, VATTAPPARAKARA,
UDUMBANCHOLA TALUK.

BY ADV. SRI.M.HARISHARMA

RESPONDENTS: PLAINTIFF AND DEFENDANTS 1,2 AND 4

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1. E.M.CHELLAPPAN, S/O.MADHAVAN,
EDAPPARAMBIL HOUSE, ARUVILAMCHAL KARA,
KANTHIPPARA VILLAGE, UDUMBANCHOLA TALUK.

2. JAMES, S/O.JOSEPH,
PALAKKAL HOUSE, VAIKOM KARA,
VAIKKOM VILLAGE.

3. SIVAN, S/O.GOPALAN,
KADAVAMKAL HOUSE, VATTAPPARA KARA,
UDUMBANCHOLA TALUK.

4. SAJEEV, S/O.GOPALAN,
KADAVUMKAL HOUSE, VATTAPPARA KARA,
UDUMBANCHOLA TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.5389 OF 2007

DATED THIS THE 20th DAY OF FEBRUARY, 2007

JUDGMENT

This petition is filed by third defendant in O.S.40/02 on the file of Sub Court, Kattappana challenging the dismissal of the C.M.A.255/03 by District Court, Thodupuzha. The suit was decreed exparte on 20.11.02. He filed I.A.1315/02, an application under Order IX Rule 13 of Code of Civil Procedure to set aside the exparte decree. Munsiff dismissed the same. That order was challenged in C.M.A.255/03. Learned District Judge took a very lenient view and allowed the appeal on condition of payment of cost of Rs.1,000/- to be made on or before 9.1.04. That order was passed on 15.12.03. Petitioner did not pay the cost. Consequently the appeal was dismissed on 12.1.2004. The order itself provided that cost is to be paid on or before 9.1.04 and on failure the appeal shall stand dismissed. Dismissal of the appeal as per order dated, 12.1.04 is challenged by filing this petition under Article 227 of Constitution of India.

2. Case of petitioner is that as he and his wife were at Vijaya Institute of Medical Sciences, Ernakulam and V.G. Saraf Memorial Hospital, Ernakulam for treatment and so the cost could not be paid as

directed by learned District Judge and therefore this Court under Article 227 of Constitution of India has to interfere and permit petitioner to have a decision on merit.

3. Learned Counsel appearing for petitioner was heard.

4. Ext.P2 order passed by learned District Judge and Ext.P1 order passed by learned Sub Judge establish that even though petitioner appeared before the Court below, he did not file a written statement within the time provided under Rule 1 of Order VIII of Code of Civil Procedure. Learned District Judge took a very lenient view and allowed the application to set aside the exparte decree on payment of cost of Rs.1,000/- to be paid on or before 9.1.04. Even though that order was passed on 15.12.03, the cost was not paid. For non payment of cost appeal was dismissed on 12.1.04. Inspite of that, this petition is filed challenging the dismissal of the appeal . That itself shows the lack of bonafides. I do not find any illegality in the order passed by learned Sub Judge warranting interference in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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